

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Smart Choice Eggriculture LLC,

Plaintiff,

v.

Liberty Mutual Insurance Company,

Defendant.

Civil Case No. 20-4734

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Smart Choice Eggriculture LLC, as and for its Complaint against Defendant Liberty Mutual Insurance Company, states and alleges as follows:

PARTIES

1. Plaintiff Smart Choice Eggriculture LLC (“Smart Choice”) is a Minnesota limited liability company with its principal place of business in Brooklyn Park, Minnesota.

2. Defendant Liberty Mutual Insurance Company (“Liberty Mutual”) is a Massachusetts corporation with its principal place of business in Boston, Massachusetts.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

4. This Court has personal jurisdiction over Liberty Mutual because Liberty Mutual consented to this Court's jurisdiction through a provision in the contract under dispute.

5. Venue is proper in this Court because Liberty Mutual consented to personal jurisdiction in this Court through a provision in the contract under dispute.

FACTUAL ALLEGATIONS

6. Smart Choice produces animal feed concentrate in Minnesota. Smart Choice sells the animal feed concentrate to markets in Africa.

7. In the spring of 2019, Smart Choice secured the shipment of a container, identified as BMOU4734431, containing 27,000 kilograms of its animal feed concentrate from Brooklyn Park, Minnesota to Lagos, Nigeria (the "Container").

8. On April 2, 2019, the Container left Brooklyn Park, MN by truck for St. Paul, Minnesota, where it was then loaded onto a train that same day. The following day, April 3, 2019, a train carrying the Container left St. Paul, Minnesota for a facility in Elizabeth, New Jersey.

9. Around that same time, Smart Choice sought insurance coverage for its cargo in the Container through insurance broker, DB Schenker, Inc. On April 5, 2019, DB Schenker, Inc. provided Smart Choice a quote from Liberty Mutual "that will cover all of Smart Choice Eggriculture LLC international and/or domestic transit shipments for a total premium of \$3,400."

10. On April 9, 2019, Smart Choice agreed to this quote, stating in an email that it would like the Liberty Mutual policy to begin the following day, April 10, 2019, and Smart Choice subsequently paid the \$3,400 premium.

11. The insurance policy between Smart Choice and Liberty Mutual is identified through number NYOMC11135201 (the “Policy”). In relevant part, the Policy initially consisted of the general Marine Cargo Policy and the more specific Declarations.

12. Paragraph 15 of the Marine Cargo Policy provides that “This insurance attaches from the time the insured goods leave the warehouse and/or place named in the policy for the commencement of the transit and continues during the ordinary course of transit ... until the goods are delivered to the final warehouse at the destination named in the policy[.]”

13. Paragraph 7 of the Declarations provides that the geographic reach of “Coverage is on a ‘port to warehouse’ basis. Coverage begins once goods are loaded onto the vessel at the port in Nigeria.”

14. The “port in Nigeria” language in Paragraph 7 of the Declarations likely reflects an error or mistake. This is demonstrated, in part, because Smart Choice’s application sought coverage for imports and exports. The language should not have specifically identified Nigeria as the only port of origination in the Policy’s port to warehouse coverage.

15. The Declarations further state that coverage will “attach on all shipments of goods insured,” and that the “Effective Date” is April 10, 2019.

16. On April 7, 2019, the Container left Elizabeth, New Jersey by truck for a marine terminal in New York, New York, where it was subsequently loaded onto the container ship VIENNA EXPRESS on April 15, 2019.

17. After reloading in Algeciras, Spain, the Container arrived in Lagos, Nigeria on June 7, 2019, where it was unloaded and temporarily stored in the relevant port facility.

18. On June 15, 2019, the Container left the Lagos, Nigeria warehouse by truck to be transported to its final destination in Abuja, Nigeria. That same day, shortly after departure, the truck suffered a road accident that caused the animal feed concentrate to spill out of the Container and suffer a total loss.

19. Smart Choice suffered financial damages as a result of the June 15, 2019 accident in excess of \$200,000.

20. Endorsement No. 3 of the Policy provides that Liberty Mutual shall only be liable up to \$150,000 for claims of loss “while in transit via public and/or private truckmen” and that Smart Choice must pay a \$500 deductible.

21. On or around June 18, 2019, Smart Choice contacted both Liberty Mutual and DB Schenker, Inc. by email and submitted an insurance claim for the loss of Smart Choice’s animal feed concentrate.

22. That same day, June 18, 2019, Liberty Mutual sent Smart Choice a letter declining to cover the loss. (the “Declination Letter”). The basis for Liberty Mutual’s denial was “Container BMOU4734431 left your warehouse in Minnesota on April 2, 2019 which is before the Policy’s inception date of April 10, 2019. Therefore and in accordance with clause 15 coverage never attached to the shipment.”

23. On or about July 11, 2019, Liberty Mutual unilaterally sought to amend the policy through Endorsement No. 5, which stated that “There is no coverage for overland shipments in Nigeria. Shipments from Nigeria are covered from the port/airport in Nigeria. Shipments to Nigeria are covered to the port/airport in Nigeria.”

COUNT I
(Breach of Contract)

24. Plaintiff restates and re-allege the foregoing as if fully stated herein.

25. Smart Choice and Liberty Mutual entered into a valid insurance contract whereby Liberty Mutual agreed to provide insurance coverage to Smart Choice on Smart Choice’s animal feed concentrate.

26. After the parties executed the insurance contract, Smart Choice’s animal feed concentrate suffered a total loss.

27. Smart Choice submitted a timely insurance claim to Liberty Mutual for the loss to Smart Choice’s animal feed concentrate under the insurance contract.

28. Liberty Mutual had a contractual duty to insure or compensate Smart Choice under its insurance contract with Smart Choice.

29. Liberty Mutual willfully breached the insurance contract by declining to insure or compensate Smart Choice for its loss under that same insurance policy.

30. Smart Choice is entitled to compensation under its insurance contract with Liberty Mutual in the amount of \$149,500.

PRAYER FOR RELIEF

WHEREFORE, Smart Choice Eggriculture LLC prays as follows:

1. For an award of monetary damages in an amount to be proven at trial, but in excess of this court's minimum jurisdictional requirements;
2. An award of all applicable statutory penalties or other statutory relief as allowed by law;
3. An award of pre- and post-judgment interest as allowed by law;
4. An award of reasonable attorneys' fees as allowed by law; and
5. An award of all such other and further relief as the Court deems just and equitable.

ECKLAND & BLANDO LLP

Dated: June 19, 2020

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